



Legal Update

December 2017

The Appeals Court holds that the police acted outside of their territorial jurisdiction when they searched a motor vehicle located in a neighboring town without the assistance of the neighboring police department.

Commonwealth v. Giovannie Luna, Mass. App. Ct. NO. 16-P-102, (2017): In April 2015, Springfield narcotics Officer Jamie Bruno received information from a confidential informant that the defendant, known as “Gio,” would be making a large delivery of heroin at the intersection of Liberty and Denton streets. The informant told Officer Bruno that the defendant would be driving a black Mini Cooper and he specified the license plate number. Officer Bruno had constant communication with the informant for the past seven months and the informant had provided information to the police that had resulted in numerous arrests and seizures.

Within the past 72 hours, the informant had purchased heroin from the defendant at the specified intersection as well as at the Toll House Apartments. Officer Bruno verified that the defendant and the informant lived at the Toll House Apartments in Springfield and also that the neighbors had complained about people congregating at the specified intersection. On April 15, 2015, Officer Bruno drove to location and observed two individuals whom he had arrest for heroin offenses in the past. Officer Bruno returned to the Toll House Apartments where he saw the defendant and a Hispanic male carrying two large plastic containers and leave in a Mini Cooper. The defendant drove the Mini Cooper to Beauregard Terrace in Chicopee where he approached a red Honda that was parked at the end of the driveway. After retrieving a large plastic bag from the trunk of the Honda, the defendant

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returned to the Mini Cooper and began driving erratically. The police, who were following the defendant, believed he was conducting counter surveillance by the manner in which he was driving, decided to stop the Mini Cooper. Officer Bruno removed the defendant and conducted a patfrisk, where he retrieved packets of heroin from the defendant's person. Officer Bruno also removed a black bag from the defendant's pocket which appeared to be the one he had observed the defendant removed from the trunk. Three cellular phones and a set of Honda car keys were also removed from the defendant.

The police arrested the defendant and within minutes of his arrest all three (3) cell phones began ringing. Because Officer Bruno did not want the investigation to be comprised, Officer Bruno and some Springfield officers returned to Beauregard Terrace located in Chicopee. No one answered when the police knocked on the apartment doors and police proceeded to open the Honda with the keys they had taken from the defendant. Several bricks of heroin and a firearm were seized from the trunk. Before searching the vehicle, Officer Bruno had requested that Chicopee police meet at Beauregard Terrace. The Chicopee police arrived after the Springfield police had searched the Honda.

Conclusion: The Appeals Court found that the Springfield police had probable cause to arrest and search the defendant when they stopped the motor vehicle he was driving in Springfield. However, the Springfield police exceeded their territorial jurisdiction when they searched the Honda located in Chicopee and seized contraband from it without the assistance of the Chicopee police.

1st Issue: Were the police justified in stopping the defendant and arresting the defendant in Springfield?

The Appeals Court held that the police had reasonable suspicion to stop the defendant based on the information that the confidential informant had provided and which Officer Bruno later corroborated through his own observations. The confidential informant was considered reliable based on past information he had supplied to the police that led to seizures of drugs and multiple convictions. Additionally, the informant told the police the defendant's name and specified the location where he had previously purchased drugs from the defendant. "It was reasonable to infer that the defendant had personal knowledge of the defendant's heroin distribution based on the detailed information he provided police." Here the informant described a transaction that was expected to occur at a specific intersection and at a definitive time. The informant also told police the make, color and license plate number of the vehicle the defendant would be driving. Police confirmed that the defendant lived in Springfield and had a second address in Chicopee and that the defendant's girlfriend had a Mini Cooper registered in her name. This information was further corroborated when the police observed the defendant leave his residence in the Mini Cooper and head to Beauregard Terrace where he removed a softball sized black bag from the Honda and drive

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to the intersection where the alleged transaction was set to occur. Considering all these factors together, the police had more than reasonable suspicion to stop the defendant, they had probable cause to arrest him. The Appeals Court held that it examined “the entire silent movie in a practical and nontechnical way, through the eyes of an experienced narcotics investigator. *Commonwealth v. Santaliz*, 413 Mass. 238, 91992). “Because the police had probable cause to arrest the defendant at the time they stopped the Mini cooper, the search of the defendant’s person was permissible as a search incident to a lawful arrest.

2nd Issue: Were the police justified in searching the Honda in Chicopee?

The Appeals Court found that the Springfield police lacked authority to conduct a warrantless search of the Honda in Chicopee because it was outside of their jurisdiction. Police lack authority to act outside of their jurisdiction unless it is authorized by statute or in the performance of a valid citizen’s arrest at common law. *Commonwealth v Twombly*, 435 Mass. 440, (2001). There is no authority that permits Massachusetts police officers to conduct a warrantless search outside of their territorial jurisdiction. Here the Springfield police searched the Honda in Chicopee without the assistance of the Chicopee police and therefore acted outside of their jurisdiction. The Appeals Court also did not agree with the Commonwealth that the contraband would have been inevitably discovered from the Honda once the Chicopee police arrived. Although the Springfield police “anticipated the arrival of the Chicopee police it was not certain.” The argument for inevitably discovery was not raised at the suppression hearing and therefore the Appeals Court was limited with the evidence it had related to this issue.

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